

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 11 2004

UNITED STATES DISTRICT COURT JAMES R. LARSEN, CLERK
EASTERN DISTRICT OF WASHINGTON DEPUTY
SPOKANE, WASHINGTON

In re METROPOLITAN SECURITIES
LITIGATION

No. CV-04-025-FVS

CLASS ACTION

THIS DOCUMENT RELATES TO: ALL
ACTIONS

ORDER RE: LEAD PLAINTIFF AND
LEAD PLAINTIFF'S COUNSEL

THIS MATTER came before the Court on May 10, 2004, pursuant to the Motion for Appointment of Lead Plaintiffs and for Appointment of Lead Plaintiffs' Lead Counsel (Ct. Rec. 30 in No. CV-04-025-FVS), and the Motion for Appointment of Lead Plaintiff and Approval of Lead Counsel (Ct. Rec. 27 in No. CV-04-028-FVS; Ct. Rec. 37 in No. CV-04-025-FVS). Bradley Jones and Steve Berman appeared on behalf of the group of plaintiffs including Keith Cauvel (hereinafter the Saylor group). Darrell Scott represented the group of plaintiffs including Esther Hall and the Meyers family. Lori Phillips appeared on behalf of Ernst & Young. The Court issued an Order re: Appointment of Lead Plaintiff on June 7, 2004, in which it determined that the Saylor group is the presumptively most adequate lead plaintiff, and permitted objections to be filed rebutting the Saylor group's showing under Civil Rule of Procedure 23. Submissions were subsequently filed, and the matter came before the Court again on August 5, 2004.

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ORDER RE: LEAD PLAINTIFF AND LEAD PLAINTIFF'S COUNSEL- 1

1 **DISCUSSION**

2 The parties agree that the Saylor group's Motion for Appointment
3 of Lead Plaintiff and Lead Plaintiff's Counsel should be granted, and
4 that the Meyers family's Motion for Appointment of Lead Plaintiff and
5 Approval of Lead Counsel should be denied. The parties disagree,
6 however, over the language that should be included in the Court's
7 Order. The Meyers family asserts that the Order should not attempt
8 to designate a class or authorize the Lead Plaintiff or Lead
9 Plaintiff's Counsel to represent the class because a motion for class
10 certification, along with all potential issues related thereto, has
11 not yet been presented to the Court. The Meyers family also asserts
12 that the Lead Plaintiff and Lead Plaintiff's Counsel should not be
13 authorized to represent the class for purposes of the bankruptcy
14 proceedings. See Metropolitan Mortgage & Securities Co, Inc., et al.
15 v. Keith Cauvel, et al., No. CV-04-187-FVS. The Saylor group
16 maintains that the Motion for Appointment of Lead Plaintiff and
17 Approval of Lead Counsel should be granted without the limitations
18 proposed by the Meyers family, who are merely attempting to
19 relitigate issues which the Court has already resolved.

20 The Court determines that the Saylor group's Motion for
21 Appointment of Lead Plaintiff and Approval of Lead Counsel is
22 **GRANTED**, and the Meyers family's Motion for Appointment of Lead
23 Plaintiff and Approval of Lead Counsel is **DENIED**. Nothing in this
24 Order precludes the litigation of any issues related to a potential
25 motion for class certification under Federal Rule of Civil Procedure
26 23.

1 **IT IS HEREBY ORDERED:**

- 2 1. Pursuant to 15 U.S.C. § 78u-4(a)(3)(B), the Saylor Group's
3 Motion for Appointment of Lead Plaintiff is **GRANTED**. The
4 members of the Saylor group, Arthur Becker, Venus ("Vee")
5 Hafford Webber, Eva Draughn, George Saylor, Becklyn Wilkey
6 and Floyd Bodner are appointed as Lead Plaintiff on behalf
7 of a potential class for all purposes in this action
8 pursuant to 15 U.S.C. § 78u(a)(3)(B).
- 9 2. The Meyers Family's Motion for Appointment of Lead
10 Plaintiff is **DENIED**.
- 11 3. The Court approves Lead Plaintiff's selection of Lead
12 Counsel. The law firms of Hagens Berman LLP and Gordon
13 Thomas Honeywell Malanca Peterson & Daheim LP are appointed
14 Lead Plaintiff's Co-Lead Counsel to represent a potential
15 class for all purposes in this action pursuant to 15 U.S.C.
16 § 78u-4(a)(3)(B).
- 17 4. Co-Lead Plaintiff's Counsel shall have the authority and
18 responsibility to:
- 19 a. Coordinate the briefing and argument of motions;
20 b. Coordinate the conduct of discovery proceedings;
21 c. Coordinate the examination of witnesses in
22 depositions;
23 d. Call meetings of counsel as they deem necessary and
24 appropriate from time to time;
25 e. Coordinate settlement negotiations with counsel for
26 defendants;


- 1 f. Coordinate communications with and appearances before
2 the Court, and coordinate the dissemination of notices
3 and orders on behalf of plaintiffs; and
4 g. Coordinate all other activities and matters concerning
5 the prosecution or resolution of the consolidated
6 actions;

7 5. Defendants' counsel may rely upon agreements made with Co-
8 Lead Plaintiff's Counsel. Such agreements shall be binding
9 on all plaintiffs.

10 6. Nothing in this Order precludes the litigation of any
11 issues related to a potential motion for class
12 certification under Federal Rule of Civil Procedure 23.

13 **IT IS SO ORDERED.** The District Court Executive is hereby
14 directed to enter this order and furnish copies to counsel.

15 **DATED** this 10th day of August, 2004.

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17 Fred Van Sickle
18 Chief United States District Judge
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